

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 27****[WT Docket No. 21-333; DA 23-999; FR ID 181482]****Mongoose Works, Ltd., 3.7-4.2 GHz Band Transition Clearinghouse Dispute Referrals and Appeals****AGENCY:** Federal Communications Commission.**ACTION:** Notification of hearing.

SUMMARY: In this document, the Wireless Telecommunications Bureau (Bureau) of the Federal Communications Commission (Commission) grants Mongoose Works, Ltd.'s (Mongoose) Petition for *De Novo* Review (Petition), and commences a hearing in connection with the 3.7-4.2 GHz Band (C-band) Transition Relocation Payment Clearinghouse's (RPC or clearinghouse) decision which adjusted downward part of Mongoose's reimbursement claim based upon its August 12, 2020 lump sum election. The issues designated for hearing are whether the Bureau erred in determining that Mongoose had not met its burden of proof to demonstrate that the RPC erred in its classification of, and reimbursement for, the two antennas at issue; whether the Bureau erred in separately determining that the RPC properly classified the two antennas at issue based on Commission guidance; and whether the reimbursed amount of \$33,994 for the two antennas at issue should be adjusted to restore the disallowed amount of \$69,686.

DATES: Mongoose shall file a written appearance by November 9, 2023, stating its intention to appear on the date fixed for the hearing and present evidence on the issues specified in the *Hearing Designation Order*.

ADDRESSES: Federal Communications Commission, 45 L St NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Susan Mort of the Wireless Telecommunications Bureau, at (202) 418-2429 or Susan.Mort@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Hearing Designation Order, in WT Docket No. 21-333, DA 23-999, adopted and released on October 20, 2023. The full text of this document is available for public inspection online at <https://docs.fcc.gov/public/attachments/DA-23-999A1.pdf>.

1. By this *Hearing Designation Order*, pursuant to §§ 0.131, 0.331, and 27.1421(c) of the Commission's rules, the *3.7 GHz Report and Order*, and the *RPC Appeals Procedures Public Notice*, the Wireless Telecommunications Bureau (Bureau) grants a Petition for *De Novo* Review (Petition), filed on September 14, 2023, by Mongoose Works, Ltd. (Mongoose), and designates this case to be tried as a written proceeding under the Commission's rules for hearing proceedings, with the Administrative Law Judge serving as the presiding officer. As discussed below, the issues designated for hearing relate to the 3.7-4.2 GHz Band (C-band) Transition Relocation Payment Clearinghouse's (RPC or clearinghouse) decision which adjusted downward part of Mongoose's reimbursement claim based upon its August 12, 2020 lump sum election.

2. In the 3.7 GHz Report and Order, the Commission adopted rules to make 280 megahertz of mid-band spectrum available for flexible use throughout the contiguous United States by transitioning existing services out of the lower portion of the band and into the upper 200 megahertz of the C-band. The Commission required new 3.7 GHz Service licensees to reimburse the reasonable relocation costs of eligible Fixed Satellite Service (FSS) space station operators, incumbent FSS earth station operators, and incumbent Fixed Service licensees (collectively, incumbents) to transition out of the band. The 3.7 GHz Report and Order also specified that incumbent FSS earth station operators may accept either: (1) reimbursement for their actual, reasonable relocation costs; or (2) a lump sum reimbursement "based on the average, estimated costs of relocating all of their incumbent earth stations" to the upper 200 megahertz of the C-band.

3. The 3.7 GHz Report and Order further provided for the creation of an independent clearinghouse to administer, subject to the Commission's rules and oversight, the cost-related aspects of the transition in a fair and transparent manner, "to mitigate financial disputes among stakeholders, and to collect and distribute payments in a timely manner." To provide the clearinghouse, incumbents, and new 3.7 GHz Service licensees with a range of reasonable transition costs, the 3.7 GHz Report and Order directed the Bureau to establish a cost catalog of the types of expenses that incumbents were likely to incur. Further, incumbent FSS earth station operators opting to receive a lump sum amount were required to make an irrevocable election and accompanying certification with the Commission by September 14,

2020 with the proviso that the information contained in such election would be “subject to verification as part of the [c]learinghouse’s role to prevent waste, fraud, and abuse” through its claims review process.

4. All reimbursement claims – whether for actual costs or lump sum amounts – must be submitted to the clearinghouse for review pursuant to § 27.1416 of the Commission’s rules. The clearinghouse “will determine in the first instance whether costs submitted for reimbursement are reasonable” and whether they comply with the requirements adopted in the 3.7 GHz Report and Order. To the extent a claimant or one or more responsible 3.7 GHz Service licensees wish to dispute the clearinghouse’s determination with respect to a submitted claim, they must file a notice of objection as required by § 27.1421(a) of the Commission’s rules. The clearinghouse may in the first instance mediate any disputes or refer the disputant parties to alternative dispute resolution fora. Subsequent appeals to the Bureau may be submitted pursuant to the procedures set forth in the RPC Appeals Procedures Public Notice. Following a Bureau decision in either a single-party or multi-party dispute, any party to a specific matter wishing to appeal that decision may do so by filing with the Commission, within ten (10) days of the effective date of the Bureau decision, a petition for de novo review, whereupon the Commission will set the matter for an evidentiary hearing before an Administrative Law Judge.

5. *Mongoose’s Lump Sum Election and RPC Claim.* Mongoose is an earth station operator with multiple antennas registered with the Commission under callsign E191601, which appear on the incumbent earth station list for purposes of the C-band transition. Mongoose filed a lump sum election with the Commission on August 12, 2020 for eight incumbent earth station antennas, and on August 16, 2021, filed a claim with the RPC seeking \$356,052 as its lump sum payment. Specifically, Mongoose requested a lump sum payment for six Small Multi-beam (2-4 beams) Earth Station Antennas (SMBEAs) at \$42,062 each and two Large Multi-beam (5+ beams) Earth Station Antennas (LMBEAs) at \$51,840 each. After review of Mongoose’s claim and supplemental information provided by the claimant, the RPC Decisional Memorandum was issued on June 1, 2022, fully approving Mongoose’s claim for six SMBEAs. The RPC classified the two remaining antennas as Receive-Only ES Multi-feed Antennas rather than LMBEAs and adjusted Mongoose’s claim amount for those antennas from \$103,680 down to \$33,994. Mongoose filed a notice of objection with the RPC for the downward adjusted portion of its

claim on June 25, 2022, seeking restoration of the full amount. On July 7, 2022, Mongoose received payment for the undisputed amount of \$286,366.

6. *Mongoose's Appeal to the Bureau.* Mongoose filed a single-party appeal of the RPC decision on July 31, 2022, asking the Bureau to order the RPC to restore the disallowed amount of \$69,686. The RPC filed its response on August 22, 2022. Mongoose filed its reply on August 29, 2022, and the RPC supplemented its response with an attestation on September 2, 2022. The instant matter arises from the Bureau's denial of Mongoose's appeal of the RPC's decision.

7. Specifically, the Bureau noted that the RPC's underlying Decisional Memorandum determined that two of the earth stations included in Mongoose's lump sum election, for which it sought reimbursement as LMBEAs, were properly classified as Receive-Only ES Multi-feed Antennas pursuant to the Final Cost Catalog Public Notice as the two relevant antennas each had only one C-band feed, and as such, Mongoose was not eligible for the higher lump sum payment for LMBEAs. The Bureau decision denied Mongoose's appeal, finding that it had not met its burden of proof in demonstrating that the RPC erred in its classification of, and reimbursement for, the two antennas at issue. The Bureau separately and independently found that the RPC both correctly interpreted the relevant Commission rules, guidance, and policies and applied them to the antennas in question. The Bureau also found that Mongoose's procedural arguments were unavailing.

8. The RPC Appeals Procedures Public Notice allows any party to a specific single-party or multi-party dispute to appeal a Bureau decision on disputed issues relating to an RPC reimbursement decision by petitioning for an evidentiary hearing before an Administrative Law Judge. The petition for a hearing must be filed within ten (10) days of the effective date of the Bureau order.

9. Mongoose filed its appeal of the Bureau's decision within ten (10) days of the effective date thereof, and we thus find that the Petition satisfies the requirements of the RPC Appeals Procedures Public Notice. Therefore, the Petition is hereby granted, and the disputed issues are designated for hearing.

10. *Written Hearings Report and Order.* The Commission recently supplemented its formal hearing processes by adopting rules that, inter alia, expand the use of a hearing procedure that relies in appropriate cases on written submissions and documentary evidence. These hearing proceedings shall be

resolved on a written record consisting of affirmative case, responsive case, and reply case submissions, along with all associated evidence in the record, including stipulations and agreements of the parties and official notice of material facts. Based on that record, the presiding officer will issue an Initial Decision pursuant to section 409(a) of the Communications Act and §§ 1.267 and 1.274(c) of the Commission's rules. The Bureau finds that this is an appropriate case for use of those procedures.

11. *Notice of Appearance.* Parties to this matter who wish to avail themselves of the opportunity to participate in the hearing proceeding must file a written appearance consistent with § 1.221(d) and (e) of the Commission's rules. The written appearance must be filed within twenty (20) days of the mailing of this Hearing Designation Order and must state, among other things, that they will present evidence on the matters specified in this order, and, if required, appear before a presiding officer at a time and place to be determined (which shall be no earlier than thirty (30) days after receipt of this order).

12. *Initial Case Order.* After release of this Hearing Designation Order, the presiding officer shall promptly release an Initial Case Order. The Initial Case Order shall put all parties on notice that they are expected to be fully cognizant of part 1 of the Commission's rules concerning Practice and Procedure, 47 CFR part 1, subparts A and B. The Initial Case Order shall also set a date for the initial status conference and a date by which each party should file a pre-conference submission that would include: (a) whether discovery is expected in this case, and if so, a proposed discovery schedule; (b) any preliminary motions they are intending to file; and (c) a proposed case schedule. The parties' pre-conference submissions should also indicate whether they request that a Protective Order be entered in this case.

13. *Initial Status Conference and Initial Status Conference Order.* The presiding officer shall set the case schedule, including any deadlines by which the parties should submit the motions they identified in their pre-conference submissions. The presiding officer shall also set the deadlines for the parties' affirmative case, responsive case, and reply case submissions in accordance with §§ 1.371 through 1.375 of the Commission's rules. If the parties have requested the entrance of a Protective Order, the presiding officer shall also set a deadline by which a joint proposed Protective Order shall be

submitted for consideration. In accordance with § 1.248(b) of the Commission's rules, the presiding officer may adopt the case schedule during the status conference or in an order following the conference.

14. *Additional status conferences* may be scheduled throughout the course of the proceeding at the request of the parties and/or at the discretion of the presiding officer. Any request by a party for a status conference must be made in writing to the presiding officer and shall be copied on all other parties.

15. *Transcripts*. In accordance with § 1.248 of the Commission's rules, an official transcript of all case conferences shall be made, unless the parties and the presiding officer agree to forego a transcript. Transcripts shall be made available to the public as part of the official record in the Commission's Electronic Comment Filing System (ECFS) in WT Docket No. 21-333.

16. *Requests for Admissions*. In accordance with § 1.246 of the Commission's rules, any party may serve upon any other party written requests for the admission of the genuineness of any relevant documents or of the truth of any relevant matters of fact. Such requests shall be served within twenty (20) days after the deadline for filing a notice of appearance unless the presiding officer sets a different time frame.

17. *Available Discovery Methods*. Sections 1.311 through 1.325 of the Commission's rules set forth procedures that may be used for the discovery of relevant facts and/or for the production and preservation of evidence for use in the hearing proceeding. These sections of the Commission's rules provide, inter alia, for the taking of depositions, for interrogatories, and for the production of documents and things.

18. *Evidentiary Rules*. In the Written Hearings Report and Order, the Commission amended § 1.351 of the Commission's rules to adopt the evidentiary standard set forth in the formal APA hearing requirements. In relevant part, § 1.351 of the Commission's rules now states, "any oral or documentary evidence may be adduced, but the presiding officer shall exclude irrelevant, immaterial, or unduly repetitious evidence." The parties remain free to make evidentiary arguments based on the Federal Rules of Evidence.

19. *Petitions to Intervene*. Any person or entity seeking status as a party in interest in this proceeding must file a petition to intervene in accordance with § 1.223(a) of the Commission's rules.

Any person or entity seeking to participate in this proceeding as a party may file a petition for leave to intervene in accordance with § 1.223(b) of the Commission's rules.

20. *Motions to Enlarge, Change or Delete Issues.* Motions to enlarge, change, or delete issues to be considered in this proceeding shall be allowed, consistent with § 1.229 of the Commission's rules.

21. *Restricted Proceeding.* This hearing proceeding is a "restricted" proceeding pursuant to § 1.1208 of the Commission's rules and thus ex parte presentations to or from Commission decision-making personnel, including the presiding officer and her staff and staff of the Commission's Wireless Telecommunications Bureau, are prohibited, except as otherwise provided in the Commission's rules.

22. *Electronic Filing of Documents.* All written submissions such as motions, letters, discovery requests and objections and written responses thereto, excluding confidential and/or other protected material, must be filed in WT Docket No. 21-333 using ECFS. ECFS shall also act as the repository for records of actions taken in this proceeding, excluding confidential and/or other protected material, by the presiding officer and the Commission. Documents responsive to any party's requests for production of documents should not be filed in ECFS. Such responsive documents shall be served directly on counsel for the party requesting the documents and produced either in hard copy or in electronic form (e.g., hard drive, thumb drive) with files named in such a way as it is clear how the documents are organized.

23. *Case Caption.* The caption of any pleading filed in this proceeding, as well as all letters, documents, or other written submissions including discovery requests and objections and responses thereto, shall indicate whether it is to be acted upon by the Commission or the presiding officer. The presiding officer shall be identified by name.

24. *Service.* All documents submitted in this proceeding must also be served on all other parties in accordance with § 1.211 of the Commission's rules and shall be accompanied by a proof of service. Service on the Enforcement Bureau shall be made using the following email address: EBHearings@fcc.gov.

25. *Confidential and/or Otherwise Protected Materials.* To the extent any party to this proceeding wishes to submit materials or information that it would like withheld from the public record, it

may do so in accordance with the procedures set forth in § 1.314 of the Commission's rules. The parties may also enter into a Protective Order. As stated above, requests for a Protective Order should be made in the parties' pre-conference submission in accordance with the schedule set forth in the Initial Case Order.

26. *Initial Decision.* The presiding officer shall issue an Initial Decision on the issues set forth herein, as well as any other issues designated for hearing in the course of the proceeding. This Initial Decision shall contain, at a minimum, findings of fact and conclusions of law, as well as the reasons or basis therefor, and the appropriate rule or order or policy and the sanction, relief or denial thereof, as appropriate.

27. Accordingly, IT IS ORDERED that the Petition for *De Novo* Review, filed on September 14, 2023, by Mongoose, IS GRANTED.

28. IT IS FURTHER ORDERED that, pursuant to the *RPC Appeals Procedures Public Notice*, this matter, as described above, IS DESIGNATED FOR HEARING before an Administrative Law Judge, at a time and place to be specified in a subsequent order, on the following issues:

- a. To determine whether the Bureau erred in determining that Mongoose had not met its burden of proof to demonstrate that the RPC erred in its classification of, and reimbursement for, the two antennas at issue;
- b. To determine whether the Bureau erred in separately determining that the RPC properly classified the two antennas at issue based on Commission guidance; and
- c. To determine whether the reimbursed amount of \$33,994 for the two antennas at issue should be adjusted to restore the disallowed amount of \$69,686.

29. IT IS FURTHER ORDERED that the burden of proceeding with the introduction of evidence and the burden of proof with respect to all issues specified herein SHALL BE UPON Mongoose.

30. IT IS FURTHER ORDERED, that Mongoose Works, Ltd. (Mongoose) is made a party to the proceeding pursuant to § 1.221(d) of the Commission's rules, 47 CFR 1.221(d). To avail itself of the opportunity to be heard, pursuant to § 1.221(e) of the Commission's rules, Mongoose, in person or by its attorneys, SHALL FILE a WRITTEN APPEARANCE, stating its intention to appear on the date fixed for

the hearing and present evidence on the issues specified in this Hearing Designation Order. Such written appearance shall be filed within twenty (20) days of the mailing of this Order pursuant to Paragraph 32 below. If Mongoose fails to file an appearance within the time specified, it shall, unless good cause for such failure is shown, forfeit its hearing rights.

31. IT IS FURTHER ORDERED that the Chief, Enforcement Bureau, SHALL BE MADE A PARTY to this proceeding without the need to file a written appearance.

32. IT IS FURTHER ORDERED that a copy of this *Hearing Designation Order* SHALL BE SENT, via Certified Mail - Return Receipt Requested to: Mongoose Works, Ltd., c/o Mark Derbyshire, 4950 S El Camino Dr, Cherry Hills Village, CO 80111.

33. IT IS FURTHER ORDERED that a copy of each document filed in this proceeding subsequent to the date of adoption of this Hearing Designation Order SHALL BE SERVED on the counsel of record appearing on behalf of the Chief, Enforcement Bureau. Parties may inquire as to the identity of such counsel by calling the Investigations & Hearings Division of the Enforcement Bureau at (202) 418-1420. Electronic service on counsel of record for the Enforcement Bureau shall be made using the following email address: EBHearings@fcc.gov.

34. IT IS FURTHER ORDERED that this *Hearing Designation Order* or a summary thereof SHALL BE PUBLISHED at the earliest practicable date in the *Federal Register*.

Federal Communications Commission.

Amy Brett,

Acting Chief of Staff,

Wireless Telecommunications Bureau.

[FR Doc. 2023-23788 Filed: 11/2/2023 8:45 am; Publication Date: 11/3/2023]